

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,)	
)	
)	No. 05-CR-10102 JLT
Plaintiff,)	
)	Motion for Leave Granted
v.)	on April 11, 2007
)	
)	
JOHN BRUENS, MARY STEWART,)	
MELISSA VAUGHN, and)	
MARC SIROCKMAN,)	
)	
)	
Defendants.)	
)	

**DEFENDANT MELISSA VAUGHN’S REPLY MEMORANDUM
IN SUPPORT OF MOTION *IN LIMINE* TO REDACT VOICEMAIL**

In the “Government’s Opposition To Defendant Melissa Vaughn’s Motion *In Limine* To Redact Voicemail” (hereafter “Opposition”), the Government contends that the voicemail is not hearsay because it will not be offered for the truth of the matters asserted therein. The Government’s own arguments belie its claim.

The Government intends to use the voicemail to establish “the knowledge of the defendants.” *See* Opposition at 3. While the Government does not clearly explain what “knowledge” the substance of the voicemail proves, it appears that the Government will seek to use the voicemail to establish that the defendants had knowledge “that doctors who were made the Cannes offer had recognized the illegality of the scheme to offer the trip in return for writing additional prescriptions of Serostim.” *See* Opposition at 3-4. To do so, however, the

Government would have to offer statements in the voicemail for the truth of the matter asserted—namely, that the Cannes program “was unethical . . . the very thing that the FDA looks for.” See Exhibit A to Melissa Vaughn’s Motion *In Limine* To Redact Voicemail. It is disingenuous for the Government to suggest that it will not offer the voicemail “to prove the doctors’ actual statements.” See Opposition at 4. The truth of these statements in the voicemail—which we seek to redact—is precisely what the Government wants to prove at trial.

If the Government is truly prepared to forego offering and using the voicemail statements for their truth, then we request that (1) the Government stipulate that these statements—*i.e.*, that the Cannes program was unethical, what the FDA looks for, etc.—are not true; (2) the Court so order; and (3) the stipulation and order be read to the jury when the voicemail is offered. If the Government refuses to stipulate, it will be clear that the Government does, in fact, want the voicemail statements to be considered by the jury for the truth and that its claim to the contrary is nothing more than an attempt to slip through the back door what the rules of evidence will not allow to enter through the front door.

Respectfully submitted,

MELISSA P. VAUGHN

By her undersigned attorneys

/s/ Adam S. Hoffinger

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MINTZ, LEVIN, COHN, FERRIS, GLOVSKY

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Dated: April 12, 2007

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing motion was filed electronically in compliance with ECF procedures on this 12th day of April 2007.

/s/ James M. Sullivan